

**Introduced by Senator Cogdill**

February 23, 2007

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An act to amend Section 1773.9 of the Labor Code, relating to prevailing wages.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 929, as introduced, Cogdill. Prevailing wage determinations: predetermined change.

Existing law generally requires contractors and subcontractors performing work on public works, as defined, costing over \$1,000 to pay to their workers the general prevailing rate of per diem wages, including these wage rates for holiday and overtime work, in the locality in which the public work is performed. Existing law provides that per diem wages includes both hourly wage rates and employer payments for employee benefits, as specified. Existing law requires the Director of Industrial Relations to determine per diem wages by referencing collective bargaining agreements, wage rates for federal public works, and, in certain instances, data from the labor organizations and employers associations, as specified. If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted by the director, existing law requires the director to incorporate those changes into his or her prevailing wage determination.

This bill would authorize contractors and subcontractors, whenever the director's prevailing wage determination contains a predetermined change but does not specify how the change will be allocated between hourly wages and employer payments for benefits, to allocate payments

equal to that change to either hourly wages or benefits for a specified time period, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1773.9 of the Labor Code is amended to  
2 read:

3 1773.9. (a) The Director of Industrial Relations shall use the  
4 methodology set forth in subdivision (b) to determine the general  
5 prevailing rate of per diem wages in the locality in which the public  
6 work is to be performed.

7 (b) The general prevailing rate of per diem wages includes all  
8 of the following:

9 (1) The basic hourly wage rate being paid to a majority of  
10 workers engaged in the particular craft, classification, or type of  
11 work within the locality and in the nearest labor market area, if a  
12 majority of the workers is paid at a single rate. If no single rate is  
13 being paid to a majority of the workers, then the single rate being  
14 paid to the greatest number of workers, or modal rate, is prevailing.  
15 If a modal rate cannot be determined, then the director shall  
16 establish an alternative rate, consistent with the methodology for  
17 determining the modal rate, by considering the appropriate  
18 collective bargaining agreements, federal rates, rates in the nearest  
19 labor market area, or other data such as wage survey data.

20 (2) Other employer payments included in per diem wages  
21 pursuant to Section 1773.1 and as included as part of the total  
22 hourly wage rate from which the basic hourly wage rate was  
23 derived. In the event the total hourly wage rate does not include  
24 any employer payments, the director shall establish a prevailing  
25 employer payment rate by the same procedure set forth in  
26 paragraph (1).

27 (3) The rate for holiday and overtime work shall be those rates  
28 specified in the collective bargaining agreement when the basic  
29 hourly rate is based on a collective bargaining agreement rate. In  
30 the event the basic hourly rate is not based on a collective  
31 bargaining agreement, the rate for holidays and overtime work, if  
32 any, included with the prevailing basic hourly rate of pay shall be  
33 prevailing.

1 (c) (1) If the director determines that the general prevailing rate  
2 of per diem wages is the rate established by a collective bargaining  
3 agreement, and that the collective bargaining agreement contains  
4 definite and predetermined changes during its term that will affect  
5 the rate adopted, the director shall incorporate those changes into  
6 the determination. Predetermined changes that are rescinded prior  
7 to their effective date shall not be enforced.

8 (2) *When the director determines that there is a definite and*  
9 *predetermined change in the general prevailing rate of per diem*  
10 *wages as described in paragraph (1), but has not published, at the*  
11 *time of the effective date of the predetermined change, the*  
12 *allocation of the predetermined change as between the basic hourly*  
13 *wage and other employer payments included in per diem wages*  
14 *pursuant to Section 1773.1, a contractor or subcontractor may*  
15 *allocate payments of not less than the amount of the definite and*  
16 *predetermined change to either the basic hourly wage or other*  
17 *employer payments included in per diem wages for up to 60 days*  
18 *following the director's publication of the specific allocation of*  
19 *the predetermined change.*